

**IN THE UNITED DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
CIVIL ACTION No: 3:17-CV-398**

BOJANGLES' INTERNATIONAL, LLC,

Plaintiff,

v.

**HARDEE'S RESTAURANTS LLC and
CKE RESTAURANTS HOLDINGS, INC.,**

Defendants.

AFFIDAVIT OF BRUCE FRAZER

I, Bruce Frazer, declare under penalty of perjury, as follows:

1. I am a citizen of the United States, over 21 years old, and a resident of Nashville, Tennessee. I have personal knowledge of the matters stated herein.
2. I have been employed by CKE Restaurant Holdings, Inc. ("CKE") since 2001. I am the Senior Vice President of Product Marketing for CKE.
3. Hardee's Restaurants, LLC ("Hardee's") is an indirect subsidiary of CKE.
4. Among my duties at CKE and Hardee's, as Senior Vice President of Product Marketing, I am involved in the development and execution of products and related advertising.
5. Hardee's regularly competes with other quick service restaurants such as Chick-Fil-A, Popeyes, Church's Chicken, Burger King, Bojangles', McDonalds, Subway, Kentucky Fried Chicken, and Zaxby's.
6. The word "Cajun" has been commonly used in the restaurant industry for decades, including without limitation the quick-service restaurants, to refer to food flavored with Cajun seasoning.

7. Hardee's restaurants have sold biscuit sandwiches for many years.
8. Hardee's restaurants have sold on a limited-time basis a cajun chicken biscuit on at least six separate occasions.
9. I was involved in the first Hardee's limited-time offer of the "Cajun Chicken Biscuit" from July 22, 2009 through August 16, 2009 in North Carolina and South Carolina including Charlotte, North Carolina.
10. To the best of my knowledge, neither Hardee's nor CKE received any objection or complaint from Bojangles, or any other restaurant in the quick-service industry, to any aspect of the promotion including the name "Cajun Chicken Biscuit".
11. I was involved in the second Hardee's limited-time offer of the "Cajun Chicken Biscuit" from September 21, 2009 through December 13, 2009 in North Carolina, including Charlotte, North Carolina.
12. To the best of my knowledge, neither Hardee's nor CKE received any objection or complaint from Bojangles, or any other restaurant in the quick-service industry, to any aspect of the promotion including the name "Cajun Chicken Biscuit".
13. I was involved in the third Hardee's limited-time offer of the "Cajun Chicken Fillet Biscuit" and "Cajun Chicken Fillet Sandwich" from May 8, 2013 through June 16, 2013 in North Carolina and South Carolina.
14. To the best of my knowledge, neither Hardee's nor CKE received any objection or complaint from Bojangles, or any other restaurant in the quick-service industry, to any aspect of the promotion including the name "Cajun Chicken Fillet Biscuit" or "Cajun Chicken Fillet Sandwich."

15. I was involved in the fourth Hardee's limited-time offer of the "Cajun Chicken Fillet Biscuit" from October 20, 2014 through December 28, 2014 in North Carolina and Virginia.
16. To the best of my knowledge, neither Hardee's nor CKE received any objection or complaint from Bojangles, or any other restaurant in the quick-service industry, to any aspect of the promotion including the name "Cajun Chicken Fillet Biscuit".
17. I was involved in the fifth Hardee's limited-time offer of the "Cajun Chicken Fillet Biscuit" from February 8, 2017 through February 28, 2017 in Jacksonville, Florida.
18. To the best of my knowledge, neither Hardee's nor CKE received any objection or complaint from Bojangles, or any other restaurant in the quick-service industry, to any aspect of the promotion including the name "Cajun Chicken Fillet Biscuit".
19. The sixth and current limited-time offer of the "Cajun Chicken Fillet Biscuit" began on June 21, 2017.
20. As communicated to Bojangles before the filing of the Complaint, in order to attempt to amicably resolve this dispute, Hardee's has committed to ending the instant offer on September 20, 2017. Further, Hardee's has committed to ending all off-premises advertising by no later than July 16, 2017. This includes the removal of all off-site billboards (which have already been removed), all advertising on the Internet (which also has already been removed) and all Internet postings on the Hardee's website and social media.
21. Thus, as of Monday, July 17, 2017, all off-site advertising will have been removed.
22. Hardee's adopted the challenged names in good faith, and its repeated use of the names over the years without challenge only reinforced its confidence that it, like the many

other restaurants that have used "Cajun" names across the country, are lawfully entitled to use them.

23. I am aware that many other businesses have used and currently use "Cajun" in the restaurant industry generically to describe their products. This includes, without limitation quick service restaurants.

24. Hardee's and CKE have expended considerable resources in connection with the current offer of the "Cajun Chicken Biscuit," including, without limitation, in purchased product and media purchases.

I declare under penalty of perjury that the foregoing is true and correct.




Bruce Frazer

Date: 7/14/17

STATE OF TENNESSEE)
) SS.
COUNTY OF WILLIAMSON)

Subscribed and sworn to before me this 14TH day of July, 2017.



Notary Public

My Commission Expires: 7.27.20

